

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. B-07/08-330
)
 Appeal of)

INTRODUCTION

The petitioner appeals a decision by the Department for Children and Families, Family Services Division, to substantiate physical abuse of a child. The issue is whether the Department has shown by a preponderance of evidence that the petitioner abused a child within the meaning of the pertinent statutes.

The decision is based upon the evidence adduced at hearing.

FINDINGS OF FACT

1. The petitioner is the uncle of M.

2. D.D. is M's step-grandmother and legal guardian.

On or about July 7, 2007, D.D. e-mailed the Department to report that petitioner abused M. D.D. spoke to the Department's investigator, M. B-W., on July 9, 2007.

D.D. testified that M had an overnight visit with her mother on Friday evening, July 6, 2007. Petitioner resided with the child's mother. M came home on Saturday between

11:00 a.m. and noon. D.D. saw a black and blue full handprint on M's right leg just above the knee and questioned M about what happened.

3. D.D. decided the day of the hearing not to make M available to testify.¹ D.D. gave the following reasons for her decision: (1) D.D. did not know whether M's mother would be present and M's mother triggers issues for M, (2) M loves the petitioner "to pieces" and testifying may be difficult for her, (3) M has a lot of issues, and (4) a court case was scheduled the next day dealing with visitation issues.

4. M. B-W. is an investigative social worker employed by the Department. She has been employed by the Department as an investigative social worker since May 2005. She has investigated approximately 350 cases. She was assigned to investigate the report that the petitioner abused M.

5. M. B-W. conducted her interviews in this case by telephone. She did not see the bruise.

6. M. B-W. interviewed petitioner by telephone. She explained to petitioner what she had learned from D.D., M, and M's mother. She testified that petitioner seemed remorseful. M. B-W. stated that the petitioner told her

¹ The Department elected to go ahead with the hearing and rely on testimony from their witnesses.

that M called him names including "f... idiot", that M gave him the finger, that he went to slap M's finger down, and that his hand went down in one movement and hit her leg. He acknowledged there was a mark. M. B-W. looked into the possibility of intensive family-based services for petitioner but he did not follow through with referrals. M. B-W.'s testimony regarding petitioner's admissions is credible.

7. M. B-W. found abuse occurred based on her analysis that a reasonable person would believe that that such a slap would leave a mark.

8. The petitioner testified. He stated that M was five years old when the incident occurred. He explained that M was acting up, screaming, and throwing objects. He testified that he tried to calm her down but was not successful. M called him names and gave him the finger. M was about two feet from him. Petitioner stated he was trying to slap her hand down using his finger tips. He stated he did not touch her leg and he did not see a bruise. He testified that he had no intention of hurting M. He did not remember admitting the incident to M. B-W.

ORDER

The Department's decision to substantiate abuse is affirmed.

REASONS

The Department for Children and Families is required by statute to investigate reports of child abuse and to maintain a registry of all investigations unless the reported facts are unsubstantiated. 33 V.S.A. §§ 4914, 4915, and 4916.

The statute has been amended to provide an administrative review process to individuals challenging their placement in the registry. 33 V.S.A. § 4916a. If the substantiation is upheld by the administrative review, the individual can request a fair hearing pursuant to 3 V.S.A. § 3091. Upon a timely request for fair hearing, the Department will note in the registry that an appeal is pending. 33 V.S.A. § 4916(a).

The pertinent sections of 33 V.S.A. § 4912 define abuse and risk of harm as follows:

(2) An "abused or neglected child" means a child whose physical health, psychological growth and development or welfare is harmed or is at substantial risk of harm by the acts or omissions of his or her parent or other person responsible for the child's welfare. An "abused or neglected child" also means a child who is sexually abused or at substantial risk of sexual abuse by any person.

(3) "harm" can occur by:

(A) Physical injury or emotional maltreatment;

(B) Failure to supply the child with adequate food, clothing, shelter, or health care. For the purposes of this subchapter, "adequate health care" means any medical or nonmedical remedial health care permitted or authorized under state law. Notwithstanding that a child might be found to be without proper parental care under chapter 55 of Title 33, a parent or other person responsible for a child's care legitimately practicing his or her religious beliefs who thereby does not provide specified medical treatment for a child shall not be considered neglectful for that reason alone; or

(C) Abandonment of the child.

...

(6) "Physical injury" means death, or permanent or temporary disfigurement or impairment of any bodily organ or function by other than accidental means.

"Temporary disfigurement" has been defined by the Board to include bruising. Fair Hearing Nos. 13,796; 10,543, and 10,419. A reasonable person should understand that a slap can leave a bruise.

Over one year later, petitioner states he did not hit M's leg but only slapped her hand with his finger tips. However, the petitioner admitted to the Department's investigator M. B-W. subsequent to the event that he tried to slap M's hand and hit her leg leaving a bruise. Petitioner made his admissions when the events were still fresh in his

mind, and these admissions are entitled to more weight than petitioner's recollection more than one year later.

The Department presented credible evidence that petitioner admitted to the abuse. Accordingly, the Department's decision to substantiate abuse is affirmed. 3 V.S.A. § 3091(d).

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